

Chapter 145: Scenic Roads

[Adopted 5-10-95 Adj. ATM Art.24. Amendments noted where applicable.]

§ 145.1. Purpose.

The Town of Westford adopts the provisions of Massachusetts General Laws chapter 40, section 15C, as amended, which provides, in part, that any repair, maintenance, reconstruction or paving work done with respect to any road, as defined in section 145.2 of this chapter, designated as a scenic road shall not involve or include the cutting or removal of trees, or the tearing down, destruction, or alteration of stone walls or portions of stone walls, except with the prior written consent of the Planning Board after a public hearing. The Town of Westford Scenic Roads Bylaw is intended to ensure that:

- A. ways will be recommended for designation as a scenic road on stated criteria
- B. ways so designated will not be altered without following proper procedures and without adherence to proper considerations, and
- C. ways so designated will not be altered by the decision of any person, organization, or agency other than the Planning Board.

§ 145.2. Definitions.

In the absence of a contrary meaning established through legislative or judicial action pursuant to Massachusetts General Laws chapter 40, section 15C, the following terms, contained in that statute and in this chapter, shall be defined as follows:

Cutting or removal of trees shall mean the removal of one or more trees, trimming of major branches, or cutting of roots sufficient in the Tree Warden's opinion to cause the eventual destruction of a tree.

Person shall mean an individual, partnership, corporation, public utility, trust, foundation, or governmental agency.

Repair, maintenance, reconstruction, or paving work shall mean any work done within a right-of-way by any person or agency, public or private, including, but not necessarily limited to, any work on any portion of any right-of-way which was not physically commenced at the time the road was designated as a scenic way; and the construction of any new driveway or private way or the alteration of any existing driveway or private way in so far as such alteration takes place within the right-of-way when such work involves the cutting down of trees or the destruction of stone walls.

Road shall mean the entire right-of-way of a vehicular traveled way plus its necessary appurtenances including, but not necessarily limited to, bridge structures, drainage systems, retaining walls, traffic control devices, and sidewalks, but not including intersecting streets, driveways and private ways. The right-of-way includes the area on and within the boundaries of the public way. If the boundaries are not officially known, any affected tree or stone wall shall be presumed to be within the public right-of-way until shown otherwise.

Trees shall include a tree whose trunk has diameter of 6 inches or more as measured 1 foot off the ground.

§ 145.3. Designation of a public way as a scenic road. [Amended 11-13-95 STM Art. 10; 10-7-97 STM Art. 13; 05-13-02 STM Art. 29; 05-08-04 ATM Art. 17]

- A. Pursuant to Massachusetts General Laws chapter 40, section 15C, the Town of Westford, by Town Meeting vote, may designate a road as a scenic road.
- B. The Planning Board, Conservation Commission, or the Historical Commission may make recommendation or requests for scenic roads designation.

§ 145.4 Procedure for designating a scenic road. [Amended 05-08-04 ATM Art. 17]

Before any Town Meeting vote on designating a road as a scenic road, the Planning Board shall conduct a public hearing. Notice of this hearing shall appear twice in a local newspaper in each of two successive weeks. The first publication must be not less than fourteen (14) days before the day of the hearing. In addition, at least 14 calendar days before this public hearing, the Planning Board shall mail notification of the meeting to the Board of Selectmen, the Conservation Commission and the Historical Commission and to all owners as of the preceding January 1 of property located in whole or in part on any road proposed as a scenic road. The notification shall identify the road or portion of a road to be designated as a scenic road and shall also include, at a minimum, section 145.1, Purpose and Section 145.5 Criteria, of this by-law. The Planning Board shall present a written or oral report with recommendations to the Town Meeting.

§ 145.5. Criteria. [Amended 05-08-04 ATM Art. 17]

- A. The Planning Board, in determining which roads or portions of roads it should recommend to Town Meeting to be designated as scenic roads, shall consider the following criteria:
 - a. ways bordered by trees of exceptional quality or trees which, when considered as a group, provide a viewer with a scenic streetscape
 - b. ways bordered by stone walls
 - c. ways bordered by bodies of water or by wetlands
 - d. ways bordered by conservation or park land
 - e. ways bordered by recreational fields
 - f. ways bordered by historical landmarks, whether natural or man made
 - g. ways bordered by any other natural or man made features of aesthetic value
 - h. ways for which any alteration is being planned or is likely to be planned in the future or
 - i. ways for which any alteration would lessen the aesthetic value of natural or man made features bordering them.
- B. In acting on scenic roads, the Planning Board shall take into consideration the following:
 - a. preservation of natural resources
 - b. environmental and historical values
 - c. scenic and aesthetic characteristics
 - d. public safety
 - e. the characteristics of local residential traffic and residential expectations
 - f. relationship of road design to standards of the Planning Board's subdivision regulations
 - g. compensatory actions proposed, such as replacement of stone walls and trees

- h. functional urgency of repair, maintenance, reconstruction, or paving
- i. financial and other consequences of design revisions to avoid or reduce damage to trees or stone walls
- j. additional evidence contributed by abutters, Town agencies, and other interested parties or
- k. other sound planning considerations.

§ 145.6. Procedures Following Town Meeting Designation Of A Scenic Road. [Amended 05-08-04 ATM Art. 17]

Upon the designation of any road or portion of a road as a scenic road, the Planning Board shall, within 30 days, take the following steps:

- a. Notify all municipal departments that may take any action with respect to such road;
- b. Notify the Massachusetts Highway Department;
- c. Publish in the local newspaper by an informal article that the road, roads, or portion of a road or roads, have been so designated;
- d. Indicate such designation on all maps currently in use by municipal departments¹; and
- e. Notify all utility companies or other such parties which may be working on the border of such road.

§ 145.7 Scenic Roads in Westford. [Amended 05-08-04 ATM Art. 17; 05-06-06 ATM Art. 20]

The following roads are designated as scenic roads under Massachusetts General Laws chapter 40, section 15C as amended, and this chapter:

- a. Hildreth Street, its entire length from Boston Road to Concord Road
- b. Old Road
- c. Old Lowell Road
- d. Vose Road
- e. Leland Road
- f. Gould Road
- g. Chamberlain Road
- h. Stony Brook Road
- i. Hunt Road
- j. Frances Hill Road

§ 145.8 Procedure and Criteria For Approval To Work On a Scenic Road [Amended 05-08-04 ATM Art. 17]

- A Application to perform work in a way designated a scenic road.

Any person or organization seeking the consent of the Planning Board under Massachusetts General Laws chapter 40, section 15C regarding any work including, but not necessarily limited to road repair, maintenance, reconstruction, paving work or curb cuts that will involve the cutting or removal of trees or the tearing down of stone walls, or portions thereof, shall file a request with the Planning Board, together with the following information:

¹ “The definition of “All maps” does not include the Town of Westford, Massachusetts, Zoning Map.”

- a) information identifying the location of the proposed action in terms of enabling readers to reasonably locate it on the ground, and describing the proposed changes to trees and stone walls;
- b) plans, drawing, or other explanatory reference materials showing the specific design or engineering details; and
- c) except in the case of Town agencies, a deposit sufficient for the cost of advertising and notification.

B. Notice prior to work on a scenic road.

The Planning Board shall, as required by statute, give notice of its public hearing by twice advertising in a newspaper of general circulation in the area. The first publication of the notice shall be as soon as feasible after the Planning Board received the request from the applicant, and shall, in all cases, be at least 14 days before the hearing. The last publications shall occur, as required by statute, at least 7 days prior to the hearing. The Planning Board shall also send copies of that notice to the Selectmen, Conservation Commission, Historical Commission, Town Engineer, Tree Warden, Department of Public Works, and owners as of the preceding January 1 of property located in whole or in part within 100 feet of the proposed action. If, in the opinion of the Planning Board, a proposed action will have an impact on the scenic quality of the scenic road and/or will result in an increase in vehicular traffic along the scenic road then notice shall be sent to the owners as of the preceding January 1 of property located in whole or in part along the entire length of the scenic road or within 1 mile of the proposed action, whichever is shorter.

C. Timing of notice.

The Planning Board shall hold a public hearing within 30 days of receipt of a properly filed request, and shall make a decision within 45 days of said receipt, unless a longer time is agreed to by the applicant.

D. Tree Warden.

Whenever feasible, Planning Board hearings shall be held in conjunction with those to be held by the Tree Warden acting pursuant to Massachusetts General Laws chapter 87. Consent to an action by the Planning Board shall not be construed as inferring consent by the Tree Warden, or vice versa.

E. Emergency repair.

The procedures of this chapter shall not be required when any Town Department acts in any emergency situation, or when the Highway Superintendent or the Tree Warden or his/her deputy act to remove a structurally unsound tree or act in accordance with Massachusetts General Laws chapter 87 to remove fallen trees or limbs which cause an obstruction to public travel or a dangerous situation with respect to utility lines.

F. Reporting.

The Planning Board shall within forty-five (45) days of receipt of a properly filed application submit a written determination of consent or denial to the applicant and a copy to the Board of Selectmen and the Town Clerk.

G. Public Shade Tree Act.

Whenever feasible, notice shall be given and Planning Board hearings shall be held in conjunction with those held by the Tree Warden when acting pursuant Massachusetts General Laws chapter 87. The consent of the Planning Board to a proposed action shall not be regarded as inferring consent of the Tree Warden, or vice versa. The Planning Board decision shall contain a condition

that no work shall be performed until all applicable provisions of the Public Shade Tree Law, Massachusetts General Laws chapter 87, have been complied with.

§ 145.9. Enforcement.

- A. Pursuant to Massachusetts General Laws chapter 40, section 15C the Planning Board shall punish a violation of this chapter:
 - a. by a fine not to exceed \$300, and/or
 - b. by remedial measures.
- B. The severity of any enforcement action pursuant to this section shall be in proportion to the severity of the violation or violations, a history of violation of this chapter or other Planning Board orders and conditions by the person being punished, and/or the willfulness of the violation or violations.
- C. The Planning Board, in order to protect the due process rights of those accused of violating this chapter and to ensure the predictability and uniformity of enforcement actions made pursuant to this section, shall adopt more detailed regulations and guidelines for the purpose of holding enforcement hearings and of implementing and carrying out the provisions of this section.

§ 145.10. Severability.

If any section or subsection of this chapter is found to be unconstitutional or contrary to the laws of the Commonwealth of Massachusetts or the United States of America then that section or subsection shall be stricken herefrom, and the remainder of this chapter shall remain in full force and effect.

§ 145.11. General.

The Planning Board may adopt more detailed regulations and guidelines for the purposes of implementing and carrying out provisions under this chapter.